

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**HERMAN ANDERSON, JR.,**

**Plaintiff,**

**Case No. 3:08-cv-248**

**vs.**

**Judge Thomas M. Rose**

**MICHAEL J. ASTRUE,  
Commissioner of Social Security,**

**Magistrate Judge Michael R. Merz**

**Defendant.**

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**ENTRY AND ORDER OVERRULING THE COMMISSIONER'S  
OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATIONS (Doc. #16); ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #15) IN ITS  
ENTIRETY; REVERSING THE COMMISSIONER'S DECISION THAT  
ANDERSON WAS NOT DISABLED; REMANDING THIS MATTER TO  
THE COMMISSIONER FOR THE PAYMENT OF BENEFITS AND  
TERMINATING THIS CASE**

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Plaintiff Herman Anderson, Jr. ("Anderson") has brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Defendant Commissioner of Social Security (the "Commissioner") denying his application for Social Security benefits. On May 12, 2009, United States Magistrate Judge Michael R. Merz filed a Report and Recommendations (doc. #11) recommending that the Commissioner's decision that Anderson was not disabled be reversed and that this matter be remanded to the Commissioner for payment of benefits. The Commissioner subsequently filed Objections (doc. #16). The time has run and Anderson has not responded to the Commissioner's objections.

Based upon the reasoning and citations of authority set forth in the Magistrate Judge's

Report and Recommendations (doc. #15) and in the Commissioner's Objections (doc. #16), as well as upon a thorough de novo review of this Court's file, including the Administrative Transcript, and a thorough review of the applicable law, this Court adopts the aforesaid Report and Recommendations in its entirety and, in so doing, reverses the Commissioner's decision that Anderson is not disabled. Finally, the Commissioner's Objections to the Magistrate Judge's Report and Recommendations are overruled.

This Court's function is to determine whether the record as a whole contains substantial evidence to support the Administrative Law Judge's ("ALJ's") decision. *Bowen v. Commissioner of Social Security*, 478 F.3d 742, 745-46 (6th Cir. 2007). This court must also determine whether the ALJ applied the correct legal criteria. *Id.*

Regarding the substantial evidence requirement, the Commissioner's findings must be affirmed if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971), citing *Consolidated Edison Company v. NLRB*, 305 U.S. 197, 229 (1938); *Landsaw v. Secretary of Health and Human Services*, 803 F.2d 211, 213 (6th Cir. 1986). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson, supra*, at 401; *Ellis v. Schweicker*, 739 F.2d 245, 248 (6th Cir. 1984). Substantial evidence is more than a mere scintilla, but only so much as would be required to prevent a directed verdict (now judgment as a matter of law) against the Commissioner if this case were being tried to a jury. *Foster v. Bowen*, 853 F.2d 483, 486 (6th Cir. 1988); *NLRB v. Columbian Enameling and Stamping Company*, 306 U.S. 292, 300 (1939).

The second judicial inquiry - reviewing the ALJ's legal criteria - may result in reversal

even if the record contains substantial evidence supporting the ALJ's factual findings. *See Bowen*, 478 F.3d at 746. A reversal based on the ALJ's legal criteria may occur, for example, when the ALJ has failed to follow the Commissioner's "own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right. *Bowen*, 478 F.3d at 746(citing in part *Wilson v. Commissioner of Social Security*, 378 F.3d 541, 546-47 (6th Cir. 2004)).

In this case, the Commissioner's decision is not supported by substantial evidence. Further, all of the factual issues have been resolved and the record adequately establishes Anderson's entitlement to benefits.

WHEREFORE, based upon the aforesaid, the Commissioner's Objections to the Magistrate Judge's Report and Recommendations (doc. #16) are OVERRULED, and this Court adopts the Report and Recommendations of the United States Magistrate Judge (Doc. #15) in its entirety. The Commissioner's decision that Anderson was not disabled and therefore not entitled to Social Security benefits is REVERSED. This matter is REMANDED to the Commissioner for the payment of benefits.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE and ORDERED** in Dayton, Ohio, this Fifteenth day of June, 2009.

s/Thomas M. Rose

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JUDGE THOMAS M. ROSE  
UNITED STATES DISTRICT COURT

Copies furnished to: Counsel of Record